

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.269

CRA-S-1849-SB-2017 (O&M)

Date of decision : 12.09.2018

Kuldeep Singh @ Bhola

..... Appellant

VERSUS

State of Punjab

..... Respondent

CRA-S-1919-SB-2017 (O&M)

Paramjit Singh @ Pammi

..... Appellant

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Deepinder Brar, Advocate, for the appellant,
in CRA-S-1849-SB-2017.

Mr. Bipan Ghai, Sr. Advocate with
Mr. Saurabh Arora, Advocate, for the appellant
in CRA-S-1919-SB-2017.

Mr. H.S. Grewal, Addl. A.G., Punjab.

SUDHIR MITTAL, J.

This judgment shall decide two above-cited appeals as both of them arise out of the same FIR No.211 dated 11.12.2013, registered under Sections 27-A and 29 of the NDPS Act, 1985 (hereinafter referred to as 'the Act') and 120-B IPC at Police Station Kotwali, Nabha and a common judgment of conviction dated 29.03.2017, passed by the Addl. Sessions Judge, Patiala.

2 On 11.12.2013, one Sub-Inspector Darbara Singh was present at the turning point of jail road, Nabha, when he received secret

information that the jail inmates of Maximum Security Jail, Nabha, in connivance with certain jail officials were engaging in smuggling of drugs. The money realized from sale of drugs inside the jail premises, is sent out of the jail through special messengers. On that day also, Kuldeep Singh @ Bhola (appellant in CRA-S-1849-SB-2017) was going to send money through Paramjit Singh @ Pammi (appellant in CRA-S-1919-SB-2017). Consequently, ruqa was sent to the police station and FIR was registered. Sub-Inspector Darbara Singh with his police party reached the gate of Maximum Security Jail, Nabha, where he met ASI-Karam Singh and others, who also joined the police party. One person was seen coming out from the jail and was intercepted by the police and he revealed his name as Paramjit Singh @ Pammi. His search led to recovery of a sum of Rs.39,000/-. During the interrogation, Paramjit Singh @ Pammi revealed that he had received a telephonic call from Kuldeep Singh @ Bhola to reach the jail premises at 3.00 p.m. He was also told that either Kuldeep Singh @ Bhola or the Deputy Superintendent Jail would call him, whereafter, he should enter the jail. He came to the jail alongwith one Chand Singh and before entering the jail premises, he handed over his mobile phone to said Chand Singh. After entering the gate of the jail, he was sent to the office of Deputy Superintendent Jail, where he met Kuldeep Singh @ Bhola and the Deputy Superintendent Jail. Kuldeep Singh @ Bhola handed over a sum of Rs.39,000/- with which he came out. He was not checked while coming out.

3 Arrest memo and personal search memo were prepared. The personal search did not lead to recovery of any drugs. An application was

submitted by the Investigating Officer, viz. Sub-Inspector Darbara Singh for obtaining CCTV footage of the jail, names of the official(s) on duty as well as the meeting register. Call detail records of the mobile phones allegedly used by Kuldeep Singh @ Bhola and Paramjit Singh @ Pammi were also sought. During investigation, Kuldeep Singh @ Bhola gave names of persons, who brought smack into the jail premises. He also named jail inmates, who were addicts. It was admitted by him that he had handed over Rs.39,000/- to Paramjit Singh @ Pammi. The persons named by Kuldeep Singh @ Bhola for bringing drugs inside the jail premises were Bahadur Khan, Kuldeep Singh @ Keepa and Amrik Singh. The jail inmates, who used to buy the drugs were named as Ashish, Bittu, Rinku, Mintu, Sukhi, Baba, Bhanu, Joggi, Bhalwan, Monnu, Satta, Deppu etc.. Aforementioned Bahadur Khan, Kuldeep Singh @ Keepa, Amrik Singh and Baljit Singh (Deputy Superintendent Jail) were also nominated as accused.

4. Challan was presented against the accused persons except Baljit Singh, Deputy Superintendent Jail. In the challan, it was mentioned that a supplementary challan would be presented against said Baljit Singh at a later date. The accused were charge-sheeted and tried.

5. The appellants were charged under Sections 29 and 27-A of the Act and Section 201 IPC read with Section 29 of the Act. Vide impugned judgment dated 29.03.2017, the persons responsible for supplying drugs inside the jail premises, namely, Bahadur Khan, Kuldeep Singh @ Keepa and Amrik Singh, were acquitted (Amrik Singh was acquitted vide a later judgment dated 21.03.2018). The appellants were,

however, convicted under Sections 29 and 27-A of the Act as well as 201 IPC. Since, the conclusion of the trial Court was that Rs.39,000/- were handed over to Paramjit Singh @ Pammi by Kuldeep Singh @ Bhola in the office of Baljit Singh (Deputy Superintendent Jail) said Baljit Singh was also liable to be tried and direction was issued for presentation of supplementary challan against him. However, no supplementary challan was presented.

6 When appeal filed by Kuldeep Singh viz. CRA-S-1849-SB-2017, came up for preliminary hearing, the Senior Superintendent of Police, Patiala, was directed to file an affidavit regarding the direction of the trial Court to present a supplementary challan against Baljit Singh, Deputy Superintendent Jail. Consequent to this order, an affidavit was filed, in which, it was mentioned that the Inspector General (Prisons), Punjab had conducted enquiry dated 18.09.2017, into the allegations against Baljit Singh and had found that his involvement was not established and therefore, no challan was presented against him. In fact, the Government of Punjab had also dropped the departmental proceedings initiated against him. A perusal of the enquiry report shows that the Inspector General (Prisons), Punjab, also found that the allegation against Kuldeep Singh @ Bhola of having delivered a sum of Rs.39,000/- to Paramjit Singh @ Pammi in the office of Baljit Singh, Deputy Superintendent Jail, was not proved. The relevant part of the enquiry report is reproduced below:-

“In this way, the allegation levelled against accused Kuldeep Singh that at the time of meeting he

delivered amount of Rs.39,000/- to his visitor Paramjit Singh son of Naginder Singh, is unproved because search of this accused has also been conducted while entering in the Deodi (Administrative Block). If the accused carry money with him then the same can be recovered during search.”

7. It is, thus, evident that although, Baljit Singh was found to be innocent by the police, a challan was presented against the appellants and their co-accused. Thus, the police investigation suffered from an inherent contradiction.

8. During the course of the trial, the prosecution led oral as well as documentary evidence. The statement of the accused under Section 313 Cr.P.C. was recorded and defence evidence was also recorded. The same has been minutely perused by me. From the evidence on record, the following facts are evident:-

(a) The mobile phones allegedly used by Kuldeep Singh @ Bhola and Paramjit Singh @ Pammi were not recovered from their possession. In fact, the mobile phone allegedly used by Kuldeep Singh @ Bhola was owned by one Satish Kumar son of Des Raj. The person to whom Paramjit Singh @ Pammi had allegedly handed over his mobile phone before entering the jail premises viz. Chand Singh, was not examined by the prosecution and his mobile phone was recovered from his residence, but the recovery memo was not signed by any of his family members.

(b) The call detail records of the aforementioned mobile phones produced during the trial cannot be read into evidence

as the competent authority has not issued any certificate under Section 65-B of the Evidence Act, 1872.

(c) Although, an application for obtaining the CCTV footage of the jail premises was made, the same was not obtained by the prosecution.

(d) The jail premises, especially, the cell of Kuldeep Singh @ Bhola was not searched immediately after the arrest of Paramjit Singh @ Pammi and no drugs were recovered either from Kuldeep Singh @ Bhola or Paramjit Singh @ Pammi.

(e) The jail inmates named as addicts, who used to buy drugs from Kuldeep Singh @ Bhola were not interrogated during the investigation.

(f) The register maintained at the gate of the jail was not produced in evidence. Ex. PW-9/P on record is not of the relevant date.

(g) Kuldeep Singh @ Bhola was searched before he entered the office of Baljit Singh, Deputy Superintendent Jail, but no cash was found on him.

(h) PW-7, ASI-Rajiv Kumar (a witness, who was joined in the police party by the Investigating Officer out-side the jail premises) admitted during his cross-examination that neither the C.D. allegedly prepared by the investigating agency nor the photographs allegedly taken by it, were prepared/taken in his presence.

(i) The cross-examination of PW-9, Sub-Inspector Darbara Singh (Investigating Officer) shows that the story of receipt of

secret information regarding smuggling of drugs is not mentioned in the ruqa, Ex.PW-9/A, sent before registration of the FIR. Before searching Paramjit Singh @ Pammi, Section 50 of the Act was not complied with. In fact, he admitted that nothing was recovered during the personal search of Paramjit Singh @ Pammi.

9. In the statement under Section 313 Cr.P.C, the appellants have alleged false implication. DW-1, Vasdev has stated that Paramjit Singh @ Pammi was taken into police custody on 10.12.2013, whereas according to prosecution version, he was arrested on 11.12.2013, while coming out of the jail.

10. Section 27-A of the Act provides punishment for financing illicit traffic and harbouring offenders and Section 29 thereof provides for punishment for abetment and criminal conspiracy. For conviction for 'financing illicit traffic', it is necessary to prove 'illicit traffic'. 'Illicit traffic' is defined in Section 2 (viii b) of the Act to mean sale, purchase and dealing in any activity in narcotic drugs or psychotropic substances. Thus, before a person can be convicted under the said provision, it is essential that a narcotic drug or psychotropic substance be recovered from the said person or there is evidence of the said person having dealt in them. In the present case, no narcotic drug or psychotropic substance has been recovered nor the alleged consumers of the said substance in prison, were examined or even interrogated. Thus, 'illicit traffic' is not proved. In such a situation, conviction for 'financing of illicit traffic' is illegal. Similarly, for conviction for abetment and criminal conspiracy under Section 29 of the Act, it is essential to establish commission or conspiracy

to commit any offence punishable under Chapter IV of the Act. Commission of any such offence or a conspiracy to commit such an offence has not been established from the evidence on record and thus, conviction under Section 29 is also illegal.

11. The prosecution has even failed to prove that Kuldeep Singh @ Bhola and Paramjit Singh @ Pammi were in communication either on the date of the incident or earlier. Recovery of Rs.39,000/- has also not been established as the Investigating Officer has suffered an admission during the cross-examination that nothing was recovered from Paramjit Singh @ Pammi when he was searched immediately after coming out from the jail. The gate register having not been produced and the CCTV footage of the jail premises having not been obtained, the prosecution has failed to even establish that Paramjit Singh @ Pammi entered the jail premises on 11.12.2013. No drugs or psychotropic substances have been recovered from either of the appellants or from the jail premises and therefore, the prosecution has failed to prove that drugs were ever smuggled inside the jail premises or were sold therein. On the other hand, the defence has established the fact that Paramjit Singh @ Pammi was taken into custody by the police a day prior to the date of the alleged incident. It is, thus, evident that the prosecution has failed to prove its case beyond reasonable doubt. As noticed earlier, there is an inherent contradiction in the investigation as Baljit Singh, Deputy Superintendent Jail, was found innocent, whereas the appellants were challaned.

12. Thus, conviction of the appellants cannot be upheld. The impugned judgment dated 29.03.2017, is accordingly set aside and the

appellants are acquitted. It is, ordered that they be released from custody forthwith. Thus, the appeals stand allowed.

13. The facts of this case as well as the evidence on record clearly suggest false implication. Paramjit Singh @ Pammi was arrested a day earlier as is evident from the statement of DW1, Vasdev. Thereafter, a story of receipt of secret information was concocted and effort was made to show that Paramjit Singh @ Pammi was arrested while emerging from the jail. The Investigating Officer failed in this attempt as no CCTV footage was obtained. The spot witness PW7, ASI-Rajiv Kumar contradicted the prosecution by deposing that no photographs/video was taken/prepared in his presence. Even the person, who allegedly took the photographs was not examined. No mobile phone could be recovered from Kuldeep Singh @ Bhola to establish that he was in contact with Paramjit Singh @ Pammi. The phone allegedly used by him was actually owned by a third person totally un-connected with the incident and thus, it is obvious that the Investigating Officer wanted to falsely implicate the appellants for reasons best known to him. The appellants have undergone a long trial of four years and incarceration of almost one and a half years and they deserve to be compensated for the agony. By placing reliance upon '**State of Rajasthan Vs. Jainudeen Shekh and Anr. 2015(4) RCR (Criminal) 119**', I direct the State of Punjab to pay compensation of Rs.2.5 lacs each to the appellants which would be recovered from the Investigating Officer, Darbara Singh, his property or his estate. Prosecution be also launched against him for

deposing falsely under oath and for false implication with malicious intent.

14. A photocopy of this judgment be placed in the file of the connected case. A copy be also sent to the Sessions Judge, Patiala and D.G.P., Punjab for further necessary action.

(SUDHIR MITTAL)
JUDGE

12.09.2018
Ramandeep Singh

Whether speaking / reasoned	Yes
Whether Reportable	Yes